IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Criminal Appellate Side

Criminal Writ Petition No.1364 of 2005

1. Shri Seva Singh Sokhi and ors. ..Petitioners

vs.

1. M/s Lok Housing & Constructions Ltd. and another ..Respondents

Shri M.C.Shah with Shri A.K.Rao for petitioners
Shri Pranav Badheka for respondent no.1
Smt.M.H.Mhatre, A.P.P. for respondent no.2 State.

CORAM: A.M.KHANWILKAR J.
6th December,2005

P.C.

1. Heard the counsel for the parties. I see no reason to differ from the opinion expressed by the trial Court while rejecting the discharge application vide order dated 4th November, 2004. The learned Trial Court has opined as under:

> "After having heard both side advocates and perusing the records, it is clear from the panchanama that the old machinery was found in the premises of the Accused. It is alleged that this transportation was done through truck but the R.T.O. report says that one truck cannot carry three tanks and the number of second truck which was given by which the machinery was transported, is a number of an Auto Rickshaw. Secondly,

> Income Tax authorities have made inquiries in this matter in 1997 and letter was sent to accused asking where the machinery was lying but no response was given to that letter by the accused. The lorry receipts which are produced before the complainant company bearing Nos.191 and 184 seem to be forged as transport office, to which this machinery was to be supplied, was not in existence. Next, the lorry receipts which are produced are prepared in the month of February, 1995 while the agreement in this matter was entered into in the month of March, 1995. Thus, the defence taken by the accused cannot be accepted at this stage. This matters requires a full trial. There is a prima facie case to frame the charge against these Accused. Therefore, discharge application made by accused nos.1, 2 and 3 deserves to be rejected."

To get over this position counsel for the petitioner submits that the Sessions Court while entertaining the revision preferred by the petitioner has virtually accepted the stand of the petitioner for which reason the application for discharge ought to have been answered in favour of the petitioner. I see no basis in this submission.

Picking up some observations from the order of the Sessions Court will be of no avail to the petitioner. My understanding of the order of the Sessions Court passed in Revision Application in substance is one of upholding the view taken by the Trial Court as no infirmity has been found by the revisional court with regard to the said view. No fault can be found with the view expressed by the Trial Court in the facts of the present case. I am in agreement with the approach as well as the opinion recorded by the Trial Court in its order dated 4th November, 2004 while rejecting the discharge application. No case is made out for discharge. It is made clear that the lower Court will proceed to hear and dispose of the proceedings without being influenced by any of the observations made in the impugned order passed by the Courts below or for that matter the present order. Writ Petition is disposed of as above.